

# **Exhibit E**

**In the Matter of:**

FTC, et al. v. Quincy Bioscience Holding, et al.

*August 20, 2020*

*Mark Underwood - 30(b)(6) - Confidential*

**Condensed Transcript with Word Index**



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FTC, et al. v. Quincy Bioscience Holding, et al.

8/20/2020

<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK 3 4 FEDERAL TRADE COMMISSION and ) 5 THE PEOPLE OF THE STATE OF ) 6 NEW YORK, by LETITIA JAMES, ) Matter No. 7 Attorney General of the State ) 1:17-cv-00124-LLS 8 of New York, ) CONFIDENTIAL 9 Plaintiffs, ) ATTORNEYS' EYES 10 v. ) ONLY 11 QUINCY BIOSCIENCE HOLDING ) 12 COMPANY, et al., ) 13 Defendants. ) 14 -----) 15 16 Thursday, August 20, 2020 17 Via Zoom 18 19 The above-entitled matter came on for the 20 30(b)(6) deposition of MARK YANCEY UNDERWOOD, pursuant 21 to notice, at 9:43 a.m., Central time; 10:43 a.m., 22 Eastern time. 23 24 25</p>	<p>1 ON BEHALF OF CORPORATE DEFENDANTS: 2 GEOFFREY W. CASTELLO, ESQ. 3 JACLYN M. METZINGER, ESQ. 4 GLENN T. GRAHAM, ESQ. 5 Kelley Drye &amp; Warren 6 One Jefferson Road 7 Second Floor 8 Parsippany, New Jersey 07054 9 (973) 503-5922 10 gcastello@kellydrye.com  13 ON BEHALF OF THE DEFENDANT UNDERWOOD: 14 MICHAEL B. DeLEEUW, ESQ. 15 TAMAR WISE, ESQ. 16 Cozen O'Connor 17 45 Broadway 18 16th Floor 19 New York, New York 10006 20 (212) 908-1331 21 mdeleeuw@cozen.com  24 ALSO PRESENT: 25 William Ducklow, FTC</p>
<p>1 APPEARANCES: 2 3 ON BEHALF OF THE FEDERAL TRADE COMMISSION: 4 ANNETTE SOBERATS, ESQ. 5 MICHELLE RUSK, ESQ. 6 EDWARD GLENNON, ESQ. 7 Federal Trade Commission 8 600 Pennsylvania Avenue, N.W. 9 Washington, DC 20850 10 (202) 326-2921 11 asoberats@ftc.gov 12 13 14 ON BEHALF OF THE STATE OF NEW YORK: 15 KATE MATUSCHAK, ESQ. 16 Assistant Attorney General for the 17 State of New York 18 Consumer Frauds and Protection Bureau 19 120 Broadway 20 New York, New York 10271 21 (212) 416-6189 22 kate.matuschak@ag.ny.gov 23 24 25</p>	<p>1 FEDERAL TRADE COMMISSION 2 I N D E X 3 4 WITNESS: 5 MARK YANCEY UNDERWOOD 6 BY MS. SOBERATS: 7 8 EXHIBITS DESCRIPTION FOR ID 9 Number MU-1 Underwood 30(b)(6) Notice 13 10 of Deposition 11 Number MU-2 11/13/13 Miller Email Re: 17 12 Verbatims #3 13 Number MU-3 Complaint Exhibits 24 14 Number MU-4 Goodman Draft Report 28 15 Number MU-5 Talati/FDA Letter 43 16 Number MU-6 Custom Biologics Animal ID 46 17 Number MU-7 Custom Biologics Report 50 18 Number MU-8 September 2012 Helina 56 Communication 19 Number MU-9 Helina Abstract 61 20 Number MU-10 Pencharz Letter 72 21 Number MU-11 2/17/16 Talati/FDA Letter 76 22 Number MU-12 12/22/12 Underwood/Beaman 79 Summary Email 23 Number MU-13 Collins v. Quincy 92 Bioscience Settlement 24 25</p>

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1       **Q. Let's look at the disclosure that appears at the**  
2       **bottom of this chart. It states, "In a computer**  
3       **assessed, double-blinded, placebo-controlled study,**  
4       **Prevagen improved recall tasks in subjects."**  
5       **Mr. Underwood, when we met with you and your**  
6       **attorneys in April of 2016, you explained that this**  
7       **chart and the disclosure that I have just read to you**  
8       **was a reference to the Madison Memory Study, and**  
9       **specifically that it was depicting results for the**  
10      **Groton Maze Recall Complete task of the Madison Memory**  
11      **Study. Is that correct?**

12      MR. CASTELLO: Objection.

13      THE WITNESS: Yes. So the GML data -- I believe  
14      the AD8 score 0 to 2, more specifically.

15      BY MS. SOBERATS:

16      **Q. Okay, when you say GML, what does that stand**  
17      **for?**

18      A. Oh, I'm sorry, you said Groton Maze Learning,  
19      that's the acronym for Groton Maze Learning. GML,  
20      sorry.

21      **Q. Okay, so this depicts the results for the Groton**  
22      **Maze Learning, not the Groton Maze Recall?**

23      A. Oh, you know, my mistake. You could be correct.

24      **Q. Okay. And does this chart show the results just**  
25      **for the treatment group of the Madison Memory Study?**

1       really as much as you can fit on the graph, or in this  
2       format, without becoming too complex, and that  
3       complexity is provided in the context of the entire  
4       study, which has always been posted on our own website.

5       **Q. And who made the decision to leave out the day**  
6       **60 data from this graphic?**

7        MR. CASTELLO: Objection.  
8        THE WITNESS: Our marketing team.  
9        BY MS. SOBERATS:

10      **Q. Were you involved in those discussions?**  
11      A. Yes.

21      MR. CASTELLO: Before the witness answers,  
22      Annette, can you just tell me which interrogatory and  
23      which one of the responses, because there were some  
24      supplemental responses in addition to the original  
25      response.

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1       A. Yes.

2       **Q. Why does it not show the results of the**  
3       **treatment group versus placebo?**

4       MR. CASTELLO: Objection.

5       THE WITNESS: Well, the entire context of the  
6       study has always been on our website, with the posting  
7       of the Madison Memory Study results. There's simply not  
8       room in the graphic to illustrate all the details.

9       BY MS. SOBERATS:

10      **Q. Okay. And let's look at the x axis. I see**  
11      **depictions here for 8 days, 30 and 90. The Madison**  
12      **Memory Study had five time points, correct?**

13      A. Yes.

14      **Q. Days 0, 8, 30, 60 and 90?**

15      A. That's correct.

16      **Q. Okay. So why is the data for day 60 not**  
17      **depicted on the x axis in this graphic?**

18      A. Same reason as the day 0 is not there. It's not  
19      meaningful to the viewer, if you will. Of course, at  
20      day 0, there's no improvement to be expected. The  
21      consumers have three basic questions. For one, how long  
22      is your study? The study was 90 days. Two, what's it  
23      going to do for me quickly? Hence the eight-day result.  
24      And since their purchase is based off of buying a  
25      one-month supply, the 30-day data was included. So it's

1       MS. SOBERATS: I would have to go back. I don't  
2       actually have that information readily available, Geoff.  
3       Just a moment.

4       THE WITNESS: And could I ask, the entirety of  
5       this document, which document is this?

6       MS. SOBERATS: As I indicated earlier, this is  
7       the complaint that Plaintiffs filed in this case.

8       THE WITNESS: Okay, I'm sorry. I -- I have to  
9       admit, when I see one legal document, they all tend to  
10      look a little bit alike. Let's see here.

11      MR. CASTELLO: Just for my own edification, I'm  
12      sorry, if the court reporter can just read back the  
13      question. Annette, the witness can answer the question.

14      MS. SOBERATS: Okay.

15      MR. CASTELLO: My struggle is just that because  
16      you referenced the interrogatory responses, I think it's  
17      fair to for us to know which one it is. You can make a  
18      representation that you've summarized one of the  
19      interrogatory responses, but for the record, without  
20      that type of a representation and caveat, you know, if  
21      you're going to reference a specific interrogatory  
22      response, I would just ask if you could identify it so  
23      we'll make certain that we're on the same page.

24      MS. SOBERATS: Sure. And I apologize for not  
25      having the reference available.

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1       **Q. Okay. It does have a UPC number, correct?**  
2       A. In typical printing it would, yeah. UPC is  
3 applied at the printer.

4       **Q. Okay.**  
5       A. Yeah.

6       **Q. And if you can please look at the three -- the**  
7 **three-bar chart here under Clinically Tested.**

8       A. Um-hmm.

9       **Q. Can you tell me in this chart what outcome from**  
10 **the Madison Memory Study is this chart based on?**

11      A. Based on our previous conversations, I'm not  
12 certain.

13      **Q. And who created this three-bar chart?**

14      A. I don't know the date of the packaging. There's  
15 no version number on what you've provided. So I don't  
16 know when this was -- and by the way, this is just the  
17 artwork with the bleed and the varnish on it for the  
18 printer to use. So I don't know the exact time frame.

19      **Q. Okay. Mr. Castello, Mr. Underwood was**  
20 **designated as the corporate representative for topic C,**  
21 **which pertains to advertising, that would include this**  
22 **bar chart which was included in Prevagen's advertising,**  
23 **and I've been unable to get any answers from him about**  
24 **what outcome from the Madison Memory Study this bar**  
25 **chart is based on. He's unable to tell me who created**

1       Mr. Castello, to the very last sentence of topic C,  
2 which very clearly states that it includes the creation,  
3 development, revision, evaluation and approval of the  
4 specific advertising and marketing materials attached as  
5 exhibits to the complaint, and as I've established in my  
6 questioning, this bar chart appeared in the complaint.  
7 We had excerpts of it on multiple pages of the  
8 complaint, and it was also attached in exhibits to the  
9 complaint.

10      And we've also asked for this information -- we  
11 have asked for information about this bar chart in the  
12 interrogatories that we served on the Defendants.  
13 Presumably the corporate representative would have  
14 reviewed those interrogatory responses and been on  
15 notice that we would be asking about this chart.

16      MR. CASTELLO: We are in disagreement, but as I  
17 said, we'll meet and confer and attempt to come to a  
18 resolution.

19      MS. SOBERATS: Okay. Thank you.

20      I would also like to note that we are going to  
21 have to keep this deposition open, since Mr. Underwood  
22 did not answer my questions about research at Quincy  
23 that was started after the Madison Memory Study. Those  
24 questions pertain to an ongoing dispute that is  
25 currently being briefed in the Southern District of New

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1       **this bar chart. And my colleagues tried to elicit this**  
2 **information from Mr. Olson, who has marketing**  
3 **responsibilities at Quincy, and from Kenneth Lerner, who**  
4 **was, as you know, the principal investigator of the**  
5 **Madison Memory Study, and no witness has been able to**  
6 **answer these very basic questions about this chart which**  
7 **was prominently featured in advertising for Prevagen.**

8       So we will need to follow up on this issue.

9       **We've tried multiple ways and multiple times and we're**  
10 **simply not getting the information that should be**  
11 **readily forthcoming from the corporate representative**  
12 **and the other witnesses that we have deposed during fact**  
13 **discovery.**

14      MR. CASTELLO: If you wanted testimony from a  
15 corporation through Rule 30(b)(6) to this level of  
16 granularity, there should be a topic that sets forth,  
17 with specificity, exactly what you intended to do by  
18 using that chart or whatever iteration. So I disagree.  
19 I would be happy to talk to you in a meet and confer  
20 context to see what we can do to provide that  
21 information, but reading this 30(b)(6) notice that has  
22 been marked as this deposition today, at that level of  
23 granularity, it is not -- it is not called for in the  
24 topic list.

25      MS. SOBERATS: And I would refer you,

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1       York, and so we will keep this deposition open pending  
2 resolution of that discovery dispute.

3       MR. CASTELLO: Just for the record, my silence  
4 is not accepted as an admission that Plaintiffs are  
5 entitled to it. It is the company's, the Defendants'  
6 position that, in fact, the Plaintiffs are not entitled  
7 to that information, but yes, it is the subject of an  
8 open dispute.

9       MS. SOBERATS: Thank you.

10      Kate, do you have any questions that you would  
11 like to ask of the witness?

12      MS. MATUSCHAK: I have no questions today, but I  
13 may have questions if and when this deposition resumes  
14 after our discovery dispute is resolved.

15      MS. SOBERATS: Geoff, do you -- Mr. Castello, do  
16 you have any redirect?

17      MR. CASTELLO: No.

18      MS. SOBERATS: Okay. Well, that concludes our  
19 30(b)(6) deposition, but as I said, we will keep it open  
20 pending resolution of the ongoing discovery dispute.

21      MR. CASTELLO: And I'll refer to my most recent  
22 statement on that topic.

23      MR. DELEEUW: Could you guys say it one more  
24 time?

25      VIDEO TECHNICIAN: This concludes today's

40 (Pages 157 to 160)